IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.10000 OF 2004

Shabbir Ebrahim Nanjee ..Petitioner

Vs.

Mohammed Rajabally Ebrahim
and Ors. ..Respondents

....

Mr.A.J.Jadhav and S.B.Tendle for Petitioner
Mr.M.H.A.Sayyad for Respondents

....

CORAM : B.H.MARLAPALLE,J.

DATE : JANUARY 28,2005

P.C.:

1. Heard Mr.Jadhav, the learned counsel for the petitioner.

2. The plaintiffs had taken out Interim Notice No.120 of 2000 in L.E. & C Suit No.160/192 of 1984 for bringing the Trustees on record. At the time of serving notice in the said Interim Notice, it was brought to their notice that the defendant no.1 had expired and therefore, another Interim Notice No.65 of 2001 was filed on 4.5.2001 for setting aside the abatement order and to bring the names of the legal representative of the defendant no.1 on record. Reply in this notice, was filed on 28.9.2002 and when the plaintiffs wanted to carry out the amendment, they came to know that the suit itself was dismissed

in default on 30.8.2002. Therefore, they took out a separate Notice on 24.3.2003 for restoration of the suit i.e. Interim Notice No.42 of 2004. The same came to be allowed by the learned Judge of the Small Causes Court vide his order dated 24.3.2004.

3. Whereas, Interim Notice No.65 of 2001 came to be allowed by order dated 24.1.2003. The order dated 24.3.2004 in Interim Notice No.42 of 2004 came to be challenged in Appeal No. 123 of 2004 and the appeal was dismissed by the impugned judgment and order dated 13.9.2004 by the Division Bench of the Small Causes Court.

4. The learned counsel for the petitioner urged that both the Courts below committed errors in proceeding exparte and there was no reason made out to restore the suit as well as the Interim Notice. The lower Appellate Court noted that the order passed by the Small Causes Court was a procedural one and it could not be called an exparte order though in Interim Notice No.42 of 2004 order to issue notice was passed, the same was recalled as the Court realised that when the suit was dismissed for default, Interim Notice No.65 of 2001 as well as Interim Notice No.125 of 2000 were pending on the file and thus, it took steps to correct its own procedural order. The reasoning given by the lower appellate Court has

considered all the issues raised by the present petitioner and therefore, the said reasoning does not call for any interference in this Petition under Article 227 of the Constitution of India.

5. Petition is rejected summarily.

[B.H.MARLAPALLE,J.]